

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

AB-7710

File: 47-306984 Reg: 00048714

S.S. SCHOONER, INC. dba Margarita Rocks
959 Hornblend Street, San Diego, CA 92109,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John P. McCarthy

Appeals Board Hearing: September 6, 2001
Los Angeles, CA

ISSUED OCTOBER 30, 2001

S.S. Schooner, Inc., doing business as Margarita Rocks (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days, with five days thereof stayed for a probationary period of one year, for appellant's bartender selling an alcoholic beverage to a minor decoy for the San Diego Police Department, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellant S. S. Schooner, Inc., appearing through its counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

¹The decision of the Department, dated September 21, 2000, is set forth in the appendix.

An administrative hearing on the accusation charging appellant with a sale of an alcoholic beverage to a minor was held on August 1, 2000. Documentary evidence was received and testimony was presented with regard to the sale. Subsequent to the hearing, the Department issued its decision which determined that the unlawful sale had occurred as charged in the accusation and that no defenses had been established.

Appellant filed a timely appeal raising the following issues: (1) the decoy operation was not conducted fairly, as required by Rule 141(a), in that the decoy entered the premises surreptitiously; (2) the Department failed to make proper findings regarding the credibility of the Department's witnesses; and (3) Rule 141(b)(2) was violated.

The Department's reply brief states: "After reviewing the record in this matter the Department does not contest or oppose the appeal filed by S. S. Schooner, Inc. in this matter."

ORDER

Based on the representation of Department counsel and our review of the record, the decision of the Department in this matter is reversed.²

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD.

²This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this order as provided by §23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code §23090 et seq.